IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.04.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE J.A.K. SAMPATHKUMAR

WRIT APPEAL NO.1579 of 2000

.....

1. The University Syndicate
   Annamalai University,
   Annamalai Nagar, Chidambaram.

2. The Vice-Chancellor,
   Annamalai University,
   Annamalai Nagar, Chidambaram.

3. The Registrar,
   Annamalai University,
   Annamalai Nagar Chidambaram ... Appellants/Respondents

.

Vs.

VR. Chelliah

... Respondent/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge dated 12.10.1999 made in Writ Petition No.11029 of 1992.

W.P.No.11029/1992: Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records in Office Memorandum No.C1-9/1171-RF dated 20.7.1992 issued by the 3rd Respondent and the resolution of the first respondent dated 27.6.1992.

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For appellants : Ms. D. Geetha
for Mr. A. Jinasenan

For respondent : Mr. S. Balasubramanian

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JUDGMENT

(Judgement of the Court was delivered by P. SATHASIVAM,J.)

Aggrieved by the order dated 12.10.1999 passed in W.P.No.11029 of 1992, the Annamalai University Syndicate, its Vice-chancellor and Registrar have filed the above writ appeal.

2. The respondent herein, writ petitioner was appointed as a Driver in the Annamalai University in April, 1979. He was suspended from service on 13.02.1992 on the ground that he secured admission to two persons, by name, A.Alexander and B.Thirunavukarasu in B.Ed., course, after getting Rs.5,000/- from them. The petitioner was asked to appear before the Enquiry Committee on 24.02.1992. The writ petitioner appeared before the Enquriy Committee. No charge was framed and he was not given an opportunity to submit his defence, but the Enquiry Committee obtained a statement from him. The persons said to have secured B.Ed. admission by payment of Rs.5,000/- were not examined before the Committee. Only based on the statements from the two persons and the statement of the writ petitioner, the Committee submitted a report finding that the above said persons got admission in B.Ed. Course after paying a sum of Rs.5,000/- to the petitioner. The report of the Committee was accepted by the University Syndicate and ultimately, the petitioner was removed from service. The appeal filed by the petitioner was also dismissed. Hence, he filed the writ petition before this Court.

3. The learned Judge, after finding that the petitioner was not given an opportunity to submit his explanation and thereby the University violated the principles of natural justice, set aside the impugned order of dismissal and allowed the writ petition. Questioning the same, the University has filed the present writ appeal.

4. Ms.D.Geetha, learned counsel for the appellants vehemently contended that inasmuch as the petitioner was given an opportunity and in fact, he participated in the enquiry and the order of dismissal was passed by the appropriate authority considering the gravity of the allegations made against him and his appeal was also rightly rejected, the learned Judge committed an error in setting aside the order of dismissal on the ground of violation of principles of natural justice. According to her, even assuming that there is violation of the principles of natural justice, the learned Judge ought to have remitted the matter to the University to decide the same afresh after affording opportunity to the writ petitioner.

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5. On the other hand, Mr. S. Balasubramanian, learned counsel for the first respondent in this appeal / writ petitioner contended that since the University has not followed Clause 7(a) of the Standing Orders under Chapter XXVII of the Laws of the University, the learned Judge is perfectly right in setting aside the order of dismissal and there is no valid ground for interference.

6. We have carefully considered the rival contentions and perused the relevant materials.

7. It is not in dispute that the petitioner is a Driver - non-teaching staff. The allegation against him is that he secured admission to two persons, by name, A.Alexander and B.Thirunavukarasu in B.Ed. Course after receiving Rs.5,000/- from them. Though after suspension, he was asked to appear before the Enquiry Committee and he also participated in the enquiry, the fact remains that the University has not framed a specific charge/charges relating to the allegations made against him. He was not asked to submit his explanation. Likewise, in the enquiry, the two persons who secured seats on the alleged payment of Rs.5,000/- to the writ petitioner were not examined and hence, the petitioner lost the opportunity to cross-examine them.

8. It is useful to refer Clause 7(a) of the Standing Orders of the Laws of University, which reads as under:

> "7(a) In every case where it is proposed to impose on a non-teaching staff any of the penalties specified below for misconduct or incompetence, the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing order on the case:
>
> (1) Reduction to a lower rank in the seniority list or to a lower Post or time-scale.
>
> (2) Recovery from pay of the whole or part of any pecuniary loss caused to the University by negligence or breach of orders.
>
> (3) Compulsory retirement otherwise than on superannuation.

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(4) Removal from the service of the University.

(5) Dismissal from the service of the University.

He shall be required within a reasonable time to put in a written statement of his defence and to state whether he desires an oral enquiry or only to be heard in person. An oral enquiry shall be held, if such an inquiry is desired by the person charged or is directed by the enquiry officer. At that enquiry oral evidence shall be heard as to such of the allegations as are not admitted and the person charges shall be entitled to cross-examine the witnesses. After the enquiry has been completed the person charged shall be entitled to put in, if he so desires, any further written statement on his defence.

After observing the above procedure, it shall be competent for the Vice-chancellor to impose on him any of the penalties specified above which is appealable before the Syndicate. The decision of the Syndicate shall be final and no appeal suit or other legal proceedings shall lie against such decision of the Syndicate. "

9. As said earlier, the petitioner is a non-teaching staff and if any of the penalties specified is to be inflicted, the University has to follow the procedure prescribed therein. It is clear that the charge shall be framed at the first instance, it shall be communicated to the person charged together with the statement of allegations and all other circumstances or materials which are to be considered at the time of passing the order. Thereafter, he shall be required to submit his written statement of his defence and it shall also be ascertained whether he desires an oral enquiry. The above clause further makes it clear that in the enquiry oral evidence shall be adduced and person charged is entitled to cross examine the witnesses on the side of the management. Even thereafter, the person charged, if desires, can very well submit further written statement of his defence. Only after observing all the above procedure it would be open for the Vice-chancellor to impose on him any of the penalties specified in Rule 7(a). The said provision also makes it clear that against the order of the Vice-chancellor, an appeal lies to the Syndicate and the decision of the Syndicate shall be final and no appeal suit or other legal proceedings will lie against such decision of the Syndicate.

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10. As said earlier, though an enquiry was conducted, the same was not in terms of Rule 7(a). In such circumstances, we are of the view that the learned Judge is right in setting aside the order of dismissal, but the learned Judge should have permitted the University to conduct enquiry in terms of Rule 7(a) and pass fresh orders in accordance with law.

For the reasons stated above, the order of the learned Judge dated 12.10.1999 made in W.P.No.11029 of 1992 is set aside and the matter is remitted to the respondent University with liberty to conduct enquiry in terms of Rule 7(a) of the Standing Orders of the Laws of University and pass orders afresh in accordance with law. The University is directed to complete the enquiry within a period of four months from the date of receipt of a copy of this order. The writ appeal is allowed on the above terms. No costs.

kh 04.04.2006

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The University Syndicate
Annamalai University,
Annamalai Nagar, Chidambaram.

2. The Vice-Chancellor,
Annamalai University,
Annamalai Nagar, Chidambaram.

3. The Registrar,
Annamalai University,
Annamalai Nagar Chidambaram

4. The Record Keeper,
VR Section, High Court, Madras.

1 cc to Mr.A.Jenasenan, Advocate, SR.16789

1 cc to Mr.S.Balasubramanian, Advocate, SR.16407
je (co)

dv/10.4.06

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